IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 6357 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURESH NARESHBHAI TRIVEDI - Applicant(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

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Appearance :
MR HARSHIT S TOLIA for Applicant(s) : 1,
MR HL JANI, APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 29/08/2006

CAV JUDGMENT

1. Rule. Mr. HL Jani, Ld. Addl. Public Prosecutor waives the service of Rule on behalf of State.

2. The applicant has preferred this application under Section 439 of the Code of Criminal Procedure [for short 'Cr. P.C.'] seeking regular bail in connection with FIR registered at C.R. No. I-242/2005 with "A" Division Police Station, Bhavnagar. It is alleged that the present applicant along with other accused of the said C.R. Number wrongfully confined the informant to extort from him diamonds of the value of Rs.49,62,000/=. For that purpose he was even given threats by showing revolver by the main accused. So far the present applicant is concerned, it is alleged that he played role in wrongful confinement of the informant and to give him threats. He, along with other accused, is, therefore, alleged to have committed offences which are made punishable under sections 364-A, 341, 342, 384, 385, 387, 504, 506 (2), 120-B and 114 of the Indian Penal Code as well as under section 25 (1) of the Arms Act. Prior to this, the applicant had approached this Court under Section 438 of the Cr. P.C., to seek anticipatory bail. Considering the fact that the allegation against the applicant regarding wrongful confinement and administering threat was doubtful in view of several statements recorded by the Investigating Officer [IO], the applicant was granted anticipatory bail by this Court by order dated 27th March, 2006. By virtue of the said order, the applicant was required to be released on bail in the event of his arrest in connection with the aforesaid C.R. Number by the police upon his executing a bond of Rs.20,000/= with one solvent surety of the like amount on certain terms and conditions enumerated in the said order. The order was to remain in effect if the applicant was arrested at any time within 90 days from the date of the order.

3. I have perused the present application and also heard Mr. HS Tolia, learned advocate for the applicant and Mr. HL Jani, Ld. APP for the opponent – State. It is not stated in the application when the applicant was arrested by the police and released on bail as per the direction of this Court contained in anticipatory bail order. However, it appears that the applicant preferred Criminal Misc. Application No. 527 of 2006 before the Ld. Presiding

Officer, Fast Track Court No. 1, Bhavnagar, which was rejected by the Ld. Judge by order dated 9th May, 2006. The applicant thereafter, approached this Court by filing the present application on 19th June, 2006. It is, however, stated by the applicant that on 9th May, 2006, upon rejection of his application, the applicant sought interim protection before the trial Court against his arrest, which was granted and subsequently extended from time to time till 19th June, 2006. It is on 19th June, 2006, the matter was filed before this Court and it was got circulated for admission hearing on 20th June, 2006. On that day, the matter was adjourned to 21st June, 2006. Thereafter, it was adjourned to 23rd June, 2006. On 23rd June, 2006 this Court, by way of interim relief, extended the protection granted by the trial Court till 26th June, 2006, which till this date continues by various orders.

4. It may be noted here that during various dates on which the hearing was fixed before this Court, the applicant had remained personally present in the Court and at the request of Mr. Tolia, he was treated to be in custody by this Court.

4.1. On the last date of hearing i.e. 18th July, 2006 I heard the learned advocate Mr. HS Tolia for the applicant and Mr. Jani, Ld. APP for the opponent – State. Mr. Tolia submitted that the applicant was granted anticipatory bail by this Court, but the Ld. Presiding Officer, Fast Track Court No. 1, Bhavnagar, rejected his application under section 439 of the Cr. P. C inspite of the fact that no further incriminating material was collected by the I O rendering case of the applicant unfit for grant of bail. He submitted that when all other accused of this case have been granted regular bail by this Court, there was no justifiable reason for the Ld. Judge to reject it. On merits of the case, he submitted that the applicant's role is very limited in the entire episode and when other similarly situated accused are granted bail, on the ground of parity also the applicant deserves bail.

4.2. As against that, Mr. Jani, Ld. APP has submitted that the order of the Court below does not show that when application under section 439 was heard by him, the applicant was in custody. According to him, if the applicant was not in custody, the Ld. Sessions Judge could not have entertained the application under section 439. To support his submission, he has placed reliance on the decision rendered by the Apex Court in the case of Nirmal Jeet Kaur v/s. State of M.P., reported in (2004) 7 S.C.C. 558.

5. I have considered the rival submissions. I have also closely perused the decision cited by Mr. Jani. It appears that this Court granted anticipatory bail to the applicant by its order dated 27th March, 2006 passed in Criminal Misc. Application No. 3006 of 2006. By virtue of the said order the applicant was required to file application under section 439 of the Cr. P C before the concerned Court within 10 days from the date of his formal arrest by the I O. He was ordered to remain present at the concerned police station on 3rd April, 2006 between 11.00 a m and 5.00 p m. The record of this application shows that he had remained present accordingly but was not arrested. He was formally arrested on 11th April, 2006 and thereafter he preferred the application within the stipulated time i.e., on 15th April, 2006, which was transferred to the concerned Judge for hearing on 18th April, 2006. IN view of the same, there was no need for him to surrender custody as per the ratio laid down by the Apex Court in the aforesaid case. The Apex Court has said that it is only after the period of protection granted under section 438 of the Cr. P C is over, the applicant has to be in custody at the time of filing application under section 439 of the Cr. P C. It may also be noted here that after his application was rejected by the Ld. Judge of the Fast Track Court, he had remained present in the Court and offered himself to surrender to the jurisdiction of this Court. His request was granted by this Court and he was treated to be in custody. Hence, the submission of Mr. Jani cannot be accepted.

6. I have also examined the merits of this case. The FIR shows that so far the applicant is concerned, his role is very limited, that is to the extent that when the informant was wrongfully confined, the applicant administered threat. However, similarly situated several other accused have been granted bail by this Court. Therefore, on the ground of parity alone, applicant deserves bail on the same terms and conditions. Hence, the following order :-

7. Considering the submissions made on behalf of the parties and having regard to the facts and circumstances of the case, the application is allowed and applicant is ordered to be released on bail in connection with Crime Register No. I-242/2005 registered at "A" Division Police Station, Bhavnagar, for the offences alleged against him in this application on his executing bond of Rs.20,000/= (Rupees Twenty Thousand only) with one solvent surety of the like amount to the satisfaction of the lower Court and subject to the conditions that he shall,

a) not take undue advantage of his liberty or abuse his liberty;

b) not to try to tamper or pressurize the prosecution witnesses or complainant in any manner;

c) maintain law and order and should co-operate the investigating officers;

d) not act in a manner injurious to the interest of the prosecution;

e) not leave the local limits of State of Gujarat without the prior permission of the concerned Sessions Judge.

f) mark presence before concerned Police Station twice in a month i.e., on 1st and 15th day of every month, any time between 11.00 a.m and 5.00 p.m till commencement of trial;

g) furnish the address of his residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

h) surrender his Passport, if any, to the lower court within a week;

i) not leave the local/revenue limits of Bhavnagar District without prior permission of the I O.

j) not enter into the local / revenue limits of Surat District without prior permission of I O.

8. If breach of any of the above conditions is committed, the concerned Sessions Judge will be free to issue warrant or take appropriate action in the matter.

9. Bail before the lower Court having jurisdiction to try the case. It would be open to the trial court concerned to give time to furnish the solvency certificate if prayed for.

Rule is made absolute. Direct service is permitted.

[AKSHAY H. MEHTA, J.]

* Pansala.